IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

JENNIFER R BAUCOM
Claimant

KUM & GO LC
Employer

APPEAL NO: 12A-UI-06068-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/29/12
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 15, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she quit her employment for reasons that qualify her to receive benefits. The claimant participated in the hearing. Lori McIntosh, the general manager, appeared on the employer's behalf.

At the beginning of the hearing, the employer made a request to continue the hearing. This request was denied. Since the employer's representative knew before the scheduled hearing that the employer's witness had problems receiving faxed documents from TALX, the employer's request to continue the hearing at the time of the hearing is not considered a timely request. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in October 2010. She worked as an assistant manager and worked an average of 32 hours a week. In late April 2011 when the claimant accepted the assistant manager position, her wages increased by 15 percent.

McIntosh talked to the claimant in late 2011 after customers complained about the claimant's attitude. In late 2011, the claimant had some medical issues that affected her attitude at work. The claimant resolved her medical issues. On April 6, 2012, the claimant received a verbal warning for accepting a check from a customer. The employer's policy did not allow the claimant to do this. Even though McIntosh had talked to the claimant about some issues, the claimant did not realize her job was in jeopardy.

McIntosh's supervisor, the district manager, told McIntosh to discharge the claimant because of customer complaints he received about the claimant's attitude and because someone saw the

claimant at a restaurant and at Wal-Mart on days she had called in sick. The claimant had been a good employee when she first started working. On April 16, McIntosh gave her the option of being discharged or continuing to work as a part time sales associate at a lower wage and fewer hours. The claimant decided to quit because her wages could be reduced by 15 percent, her hours would be reduced 15 to 25 hours a week and she did not believe the demotion was fair.

On April 16, the claimant resigned and gave the employer a two-week notice. The claimant's last day of work was April 22, 2012. The claimant established a claim for benefits during the week of April 29, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6(2).

The law presumes a claimant leaves employment with good cause when she quits because of a substantial change in the employment contract. 871 IAC 24.26(1). The employer gave the claimant a choice of being discharged or being demoted with a change in her hours and wages. The employer may have had justifiable business reasons for demoting the claimant, but the demotion resulted in a substantial change in the claimant's hours and wages. In *Wiese v. Iowa Department of Job Service*, 389 N.W.2d 676 (Iowa 1986), the Iowa Supreme Court stated: "We believe that a good faith effort by an employer to continue to provide employment for his employees may be considered in examining whether contract changes are substantial and whether such changes are the cause of an employee quit attributable to the employer."

In *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court ruled that a 25 percent to 35 percent reduction in hours was, as a matter of law, a substantial change in the contract of hire. Further, while citing *Wiese* with approval, the Court stated that:

> It is not necessary to show that the employer acted negligently or in bad faith to show that an employee left with good cause attributable to the employer…. [G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing.

(*Id*. at 702.) *Dehmel,* the more recent case, is directly on point with this case. The next issue is whether a 15 percent hourly wage reduction is a substantial change in the contract of hire. The Court in *Dehmel* concluded a 25 percent to 35 percent pay reduction was substantial as a matter of law, citing cases from other jurisdictions that had held reductions ranging from 15 percent to 26 percent were substantial. *Id*. at 703. Since the hours would also be reduced, in reality the claimant wages would be reduced more than 15 percent if she agreed to the demotion. Based on the reasoning in *Dehmel*, a reduction or more than 15 percent is a substantial change. The claimant established good cause for quitting her employment.

DECISION:

The representative's May 15, 2012 determination (reference 01) is affirmed. The claimant quit her employment for reasons that qualify her to receive benefits. As of April 29, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

_____
Debra L. Wise
Administrative Law Judge

_____
Decision Dated and Mailed

dlw/pjs